

in an easterly direction towards the Otonabee river. In the opening of this allowance for road and making it fit to be travelled upon, and some time before the other highway was projected, it was arranged between the Reeve of the Township of North Monaghan and the plaintiff that the difficulties in the making of the road caused by this elbow in the creek should be overcome, as far as practicable, by intercepting the bulk of the water on the north side of the road and sending it down a channel to be cut there, and so prevent its double crossing of the road at the elbow; but that part of the water should be let through a culvert to the south side of the road, enough to supply water for cattle on the plaintiff's land; and this was done to the satisfaction of all concerned. The result of this was, that the plaintiff's right in regard to the flow of the stream was to a flow sufficient for the purpose of watering his cattle, and no more. That was arranged for by two culverts. But, when the new road was opened, it became necessary to carry the now reduced stream, going westward, under this road; and that was done by means of a culvert. The plaintiff complained of the insufficiency of this culvert; and the fact was, that the flow of the water had, in recent years, been appreciably intercepted, and the plaintiff was not getting that flow of water which was intended to be continued after the diversion of the main body.

Upon the whole case, for the purpose of an action for damages only, it could not be said that the trial Judge was wrong in his finding of fact that the stream once reached the plaintiff's land.

The defendants were not bound to supply the water, but they were bound to do nothing to obstruct it. If in the process of nature the course of the stream were changed, or dammed up, so that the plaintiff lost all or any part of the advantages he had from the flow of the stream, the defendants could not be answerable; but, if anything done by them caused the loss, the defendants would be liable. Their duty was not only to make the flow large enough, but to keep it large enough, to take through it enough water for the plaintiff's cattle.

The defendants denied responsibility in respect of this highway, on the ground that it had never been established by by-law of the council or otherwise assumed for public use by the corporation: Municipal Act, R.S.O. 1914 ch. 192, sec. 460 (6). But the road was dedicated to the public by those who opened it; a deed to the township corporation was executed, and was registered by an officer of the corporation; some money was paid by the corporation for repairs done upon the road; and there was no evidence of any repudiation of these acts. Upon the acceptance by the